

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ROSE ANGEL OCON,

Appellant,

vs.

ALBERT DEL GUERCIO, ACTING OFFICER  
IN CHARGE OF THE IMMIGRATION AND  
NATURALIZATION SERVICE, LOS ANGELES,  
CALIFORNIA,

Appellee.

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PETITION FOR REHEARING

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APPEAL FROM  
THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

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FILED

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PAUL P. O'BRIEN, CLERK

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TO THE HONORABLE CIRCUIT JUDGES STEPHENS,  
LEE AND CHAMBERS:

Petitioner respectfully requests that the Honorable  
Judges of this Court rehear and review the decision handed  
down by this Court on September 26, 1956, wherein the  
judgment for the United States District Court for the Southern  
District of California, Central Division, in the above entitled  
case was affirmed.





I.

STATEMENT OF GROUNDS

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This petition for rehearing and review is based upon the following grounds: That the interest of justice will best be served by granting a rehearing in this case because the constitutional questions raised herein and adversely ruled upon by this Court are presently before the United States Supreme Court in a pending case, and the decision in that case must control the Court's ruling here.

II.

ARGUMENT

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This Court held that the contention that the 1952 Immigration and Nationality Act violates the Constitution is without merit because challenges to the constitutionality of the statute in question on the grounds that it violates due process, constitutes a Bill of Attainder and an ex post facto law, and violates freedom of speech and association have already been rejected in Galvan v. Press, 9 Cir., 1953, 201 Fed.2d 302, Affirmed 1954, 347 U.S. 522, rehearing denied 348 U.S. 852, and numerous cases following the Galvan decision. As this Court itself pointed out, however, the decision in the Galvan case involved the Internal Security Act



o 1950, 64 Stat. 987, Title 50 U.S.C. §781 et seq., although  
Cain v. Boyd, 14633, 9 Cir., decided August 4, 1956,  
\_\_\_\_\_ Fed. 2d \_\_\_\_\_, held that the reasoning of the Galvan  
case was equally applicable to the 1952 Immigration and  
Nationality Act. The case of Rowaldt v. Perfetto, 8 Cir., 1955  
28 Fed. 2d 109, was a case raising the unconstitutionality of  
the 1952 Immigration and Nationality Act on the same grounds  
as raised in the instant case. In the Rowaldt case, the petition  
for a writ of certiorari raised two questions, the first being  
whether or not Rowaldt's membership in the Communist Party  
was sufficient to support a finding that he was deportable on  
that ground or that he had only been a nominal member and  
therefore not subject to deportation, and secondly, whether the  
1952 Immigration and Nationality Act's provisions for deporta-  
tion of aliens for past Communist Party membership was  
unconstitutional on its face or as applied to facts in the instant  
case. See 25 L. W. 3004. The second point raised in the  
Rowaldt petition for certiorari covers the constitutional points  
raised in the instant case. Certiorari was granted by the  
United States Supreme Court on March 26, 1956. 350 U.S. 993  
This was an unconditional grant of certiorari covering both  
points.

The Rowaldt case was not cited to the Court here in  
briefs or in oral argument. By its unconditional grant of



ce-tiorari, the United States Supreme Court indicates that it may  
ne be ready to apply the reasoning in the Galvan case to the 1952  
Immigration and Nationality Statute. The case of Rowaldt v.  
Prfetto is presently scheduled for argument before the United  
States Supreme Court during the week of October 15, 1956.  
2 L. W. 3108. It is respectfully submitted that the decision of  
the District Court in the instant case should be reheard and  
reviewed by this Court, and that this Court, in the interests of  
justice, should await the outcome of the United States Supreme  
Court's ruling in the Rowaldt case and render its decision on the  
constitutional points raised herein in conformity with that decision.

Respectfully submitted,

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IRWIN GOSTIN  
Attorney for Appellant.

IRWIN GOSTIN hereby certifies that he is the attorney of  
record for the appellant herein, that in his judgment and opinion  
the within Petition for Rehearing is well founded, and that said  
Petition for Rehearing is not interposed for any purpose of delay  
but is submitted solely in the interests of justice.

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IRWIN GOSTIN

